

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

NATIONAL GRANGE MUTUAL :  
INSURANCE COMPANY :  
as Subrogee of Gary and Amanda :  
Kazowski :  
55 West Street :  
Keene, New Hampshire 03431 :

Plaintiff,

v.

AMERICAN STANDARD, INC. :  
One Centennial Avenue :  
P.O. Box 6820 :  
Piscataway, NJ 08855 :

Defendant.

Civil Action No.:

**JURY TRIAL DEMANDED**

**04-40227**

RECEIPT # 10 4440  
AMOUNT \$ 150.00  
SUMMONS ISSUED ✓  
LOCAL RULE 4.1 ✓  
WAIVER FORM ✓  
MCF ISSUED ✓  
BY DPTY. CLK. KY  
DATE 11-1-04

**COMPLAINT**

NOW COMES Plaintiff, National Grange Mutual Insurance Company, by and through its undersigned counsel, and hereby demands judgment against defendant, American Standard, Inc., and in support thereof avers as follows:

**PARTIES**

1. Plaintiff, National Grange (hereinafter "National Grange") is a corporation organized and existing under the laws of the State of New Hampshire with a principal place of business located at 55 West Street, Keene, New Hampshire, 03431 which at all times material hereto was duly authorized to issue insurance policies in the Commonwealth of Massachusetts.

2. Defendant, American Standard, Inc. (hereinafter "American Standard") is a corporation organized and existing under the laws of the State of Delaware with a principal place of business located at One Centennial Avenue, Piscataway, New Jersey, 08855, which at all

times material hereto was in the business of, inter alia, manufacturing kitchen and bath fixtures, including tub fixtures.

### **JURISDICTION AND VENUE**

3. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1332(a). The matter in controversy exceeds, exclusive of interest and costs, the sum of One Hundred Thousand Dollars (\$100,000.00) and there is diversity of citizenship between plaintiff and defendant.

4. Venue in this action is in the District of Massachusetts pursuant to 28 U.S.C. § 1391 as the claim arose in this district.

### **GENERAL ALLEGATIONS**

5. Plaintiff's insureds, Amanda Kazowski and Gary Kazowski, (hereinafter "Kazowski") are adult individuals that for all times relevant resided at 284 Brookfield Road, Charleton, Mass. 01507

6. Prior to February 12, 2002 National Grange issued a policy of insurance to Kazowski, policy number 51K11628, which provided property insurance coverage for the premises.

7. At all times relevant to this complaint, Defendant American Standard was engaged in the business of designing, manufacturing, supplying, distributing, selling and/or otherwise placing into the stream of commerce kitchen and bath fixtures, including among other things, plumbing fixtures and faucets for use, inter alia, by individual consumers.

8. Prior to February 12, 2002, a tub fixture, Williamsburg faucet Series 2900 bearing identification numbers M968319B and US60359B ("the tub fixture"), was designed, manufactured, supplied, distributed, sold and/or otherwise placed into the stream of commerce by defendant American Standard and subsequently was purchased by the Kazowskis.

9. On or about February 12, 2002 the valve assembly for the hot water side of the tub fixture broke as a result of defect allowing large amounts of water to flow into the Kazowski home causing extensive water damage.

10. The water discharge of February 12, 2002 was caused by the defective tub fixture.

11. The water discharge of February 12, 2002 caused substantial damage and destruction to the real and personal property of the Kazowskis.

12. Pursuant to the terms and conditions of the policy, National Grange made payments to the Kazowskis for the property damage in excess of One Hundred Forty Four Thousand Dollars (\$144,000.00).

13. Pursuant to the principles of legal and equitable subrogation, as well as the terms and conditions of the aforementioned policy of insurance National Grange is subrogated to the rights of its insured to the extent of its payments.

### **COUNT I**

#### **NEGLIGENCE**

#### **PLAINTIFF V. DEFENDANT AMERICAN STANDARD**

14. Plaintiff incorporates by reference each and every allegation set forth above and below as though the same were fully set forth herein at length.

15. The aforementioned water discharge and the subsequent loss and damage to plaintiff's insureds' property were a direct and proximate result of the negligence, gross negligence, carelessness, omissions, and/or failures to act of defendants, their employees, agents and/or servants, acting within the course and scope of their employment, both in general and in the following particulars:

- a) Designing, manufacturing, assembling, marketing, supplying, distributing, selling and/or otherwise placing into the stream of commerce the defective tub fixture;

- b) Failing to ensure proper and sufficient materials were used in the design, manufacture, assembly of the subject fixture prior to marketing, supplying, distributing, selling and/or otherwise placing it into the stream of commerce;
- c) Designing, manufacturing, assembling, marketing, supplying, distributing, selling and/or otherwise placing into the stream of commerce an unreasonably dangerous product;
- d) Designing, manufacturing, assembling, marketing, supplying, distributing, selling and/or otherwise placing into the stream of commerce a product that the defendant knew or should have known was unreasonably dangerous;
- e) Failing to properly warn plaintiff's insured of any and all dangers and/or hazards associated with the defective faucet; and
- f) Otherwise failing to exercise reasonable care under the circumstances.

As a direct and proximate result of the negligent acts and/or omissions on the part of the defendants, the occurrence referred to above took place resulting in damage and destruction to the plaintiff's insureds' property.

WHEREFORE, Plaintiff National Grange demands judgment against the Defendant in excess of \$144,000.00 together with interest and the cost of this action, and such other and further relief as this Court deems just and proper.

## **COUNT II**

### **BREACH OF EXPRESS AND/OR IMPLIED WARRANTIES** **PLAINTIFF V. DEFENDANT AMERICAN STANDARD**

16. Plaintiff incorporates by reference each and every allegation set forth above and below as though the same were fully set forth herein at length.

17. At the time the subject faucet was sold and/or supplied it was in a defective condition, which defect(s) rendered it unreasonably dangerous to persons and property. The aforementioned defect(s) directly and proximately caused National Grange's insured to suffer substantial property damage. Defendant American Standard is therefore liable in this matter.

18. The aforementioned water discharge and resulting property damage was directly and proximately caused by defendant's conduct in:

- a) Designing, manufacturing, assembling, marketing, selling, distributing, supplying and/or otherwise placing into the stream of commerce an unreasonably dangerous and defective tub fixture which defendant knew or should have known subjected the property of plaintiff's insured to an unreasonable risk of harm;
- b) failing to warn of the aforesaid defective condition; and
- c) generally acting in a manner which subjected it to strict liability under all of the circumstances.

19. In designing, manufacturing, assembling, marketing, selling, distributing, supplying and/or otherwise placing into the stream of commerce the subject faucet, the defendant expressly and/or impliedly warranted that its product was of good and merchantable quality and fit for its ordinary intended and foreseeable use and/or particular purpose.

20. The defendant breached the aforesaid express and/or implied contract-based warranties, as well as the statutory warranty provided for by Massachusetts Uniform Commercial Code. As a direct and proximate result of the breach of the aforementioned warranties, the water discharge occurred, resulting in damage and destruction to plaintiff's insureds' property.

WHEREFORE, Plaintiff National Grange demands judgment against the Defendant in excess of \$144,000.00 together with interest and the cost of this action, and such other and further relief as this Court deems just and proper.

### **COUNT III**

#### **CONSUMER PROTECTION ACT VIOLATION** **MASS. ANN. LAWS. CH 93A** **PLAINTIFF V. DEFENDANT AMERICAN STANDARD**

21. Plaintiff incorporates by reference each and every allegation set forth above and below as though the same were fully set forth herein at length.

22. At all times material hereto, defendant was engaged in trade or commerce as defined in M.G.L. c. 93A, §§ 2, 9.

23. The defendant, by virtue of advertisements, promotional literature, and/or sales brochures, represented to the general public, and to plaintiff's insureds in particular, that the design and manufacture of the tub fixture was of a particular standard, quality or grade.

24. The Kazowskis reasonably and justifiably relied on defendant's representations that the design and manufacture of the tub fixture was of a particular standard, quality or grade.

25. The defendant violated the Consumer Protection Act in failing to provide a tub fixture of a particular design and/or manufacture standard, quality or grade as represented to and reasonably and justifiably relied upon by the general public, and plaintiff's insureds in particular.

26. The defendant violated the Consumer Protection Act in representing to the general public, and the Kasowskis in particular, that the tub fixture possessed design and/or manufacture characteristics that it in fact did not have.

27. The defendant advertised its tub fixture with intent not to sell the tub fixture as advertised in direct violation of the Consumer Protection Act.

28. The defendant knew or should have known of the design and/or manufacturing defects and therefore violated the Consumer Protection Act.

29. The defendant failed to warn the general public, and the Kasowskis in particular, of the design and/or manufacturing defects inherent in the tub fixture.

30. The defendant committed an unfair, fraudulent, tortious and deceptive act and/or practice in the conduct of trade or commerce within this Commonwealth.

31. On August 8, 2002, the plaintiff complied with the requirements of M.G.L. c. 93A, §9 by sending a formal notice and demand letter to the defendant, informing the defendant


of the defect in the tub fixture and the nature of the damages caused to plaintiff's insureds' property as result.

32. Plaintiff did not receive a response to its M.G.L. c. 93A demand from defendant.

33. As a direct and proximate result of the aforesaid violations of the defendant, the water discharge occurred, resulting in damage and destruction to plaintiff's insureds' property.

WHEREFORE, Plaintiff National Grange demands judgment against the Defendant in excess of \$144,000.00 together with interest and the cost of this action, and such other and further relief as this Court deems just and proper.

Respectfully submitted,  
NATIONAL GRANGE MUTUAL  
INSURANCE COMPANY  
As subrogee of Gary and Amanda Kazowski,  
By its attorneys,



Roy P. Giarrusso BBO No. 549470  
Christine Kelley Tramontana BBO No. 644849  
GIARRUSSO, NORTON, COOLEY  
& MCGLONE, P.C.  
Marina Bay  
308 Victory Road  
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(617) 770-2900

Dated: 10/28/04

OF COUNSEL:

Erick J. Kirker  
COZEN O'CONNOR  
1900 Market Street  
The Atrium  
Philadelphia, PA 19103  
(215) 665-2172  
Phila1\1979782\1

## CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## (a) PLAINTIFFS

National Grange Mutual Insurance Company,  
as Subrogee of Gary and Amanda Kazowski

## DEFENDANTS

American Standard, Inc.

FILED  
CLERK'S OFFICE

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF New Hampshire  
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT New Jersey  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Christine Kelley Tramontana  
Giarrusso, Norton, Cooley & McGlone, P.C.  
Marina Bay, 308 Victory Road, Quincy, MA 02171  
(617) 770-2900

ATTORNEYS (IF KNOWN)

04-40227

BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY)

- U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)  
U.S. Government Defendant ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- |   | PTF                                   | DEF                                   |   | PTF                        | DEF                        |
|---|---------------------------------------|---------------------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1            | <input type="checkbox"/> 1            | Incorporated or Principal Place of Business in This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input checked="" type="checkbox"/> 2 | <input checked="" type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3            | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

☒ Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> Insurance <input type="checkbox"/> Marine <input type="checkbox"/> Miller Act <input type="checkbox"/> Negotiable Instrument <input type="checkbox"/> Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> Medicare Act <input type="checkbox"/> Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> Stockholders' Suits <input type="checkbox"/> Other Contract <input type="checkbox"/> Contract Product Liability	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input checked="" type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 406 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 990 Other Statutory Actions

CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

28 U.S.C. §1332(a)

REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION  
☐ UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ YES ☐ NO

RELATED CASE(S) (See instructions):  
IF ANY

JUDGE

DOCKET NUMBER

SIGNATURE OF ATTORNEY OF RECORD

*Christine Kelley Tramontana*

OFFICE USE ONLY

PT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_



1. TITLE OF CASE (NAME OF FIRST PARTY ON EACH SIDE ONLY) National Grange Mutual Insurance Co. v. American Standard, Inc.
2. CATEGORY IN WHICH THE CASE BELONGS BASED UPON THE NUMBERED NATURE OF SUIT CODE LISTED ON THE CIVIL COVER SHEET. (SEE LOCAL RULE 40.1(A)(1)).

       I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.

       II. 195, 368, 400, 440, 441-444, 540, 550, 625, 710, 726, 730, 740, 790, 791, 820, 830, 840, 850, 890, 892-894, 895, 950.

  X   III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.

       IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.

       V. 150, 152, 153.

04-40227

3. TITLE AND NUMBER, IF ANY, OF RELATED CASES. (SEE LOCAL RULE 40.1(E)).

4. HAS A PRIOR ACTION BETWEEN THE SAME PARTIES AND BASED ON THE SAME CLAIM EVER BEEN FILED IN THIS COURT?  
No

5. DOES THE COMPLAINT IN THIS CASE QUESTION THE CONSTITUTIONALITY OF AN ACT OF CONGRESS AFFECTING THE PUBLIC INTEREST? No

IF SO, IS THE U.S.A. OR AN OFFICER, AGENT OR EMPLOYEE OF THE U.S. A PARTY? (SEE 28 USC 2403)       

6. IS THIS CASE REQUIRED TO BE HEARD AND DETERMINED BY A DISTRICT COURT OF THREE JUDGES PURSUANT TO TITLE 28 USC 2284? No

7. DO ALL PARTIES IN THIS ACTION RESIDE IN THE CENTRAL SECTION OF THE DISTRICT OF MASSACHUSETTS (WORCESTER COUNTY) - (SEE LOCAL RULE 40.1(C)). YES        OR IN THE WESTERN SECTION (BERKSHIRE, FRANKLIN, HAMPDEN OR HAMPSHIRE COUNTIES)? - (SEE LOCAL RULE 40.1(D)). YES

8. DO ALL OF THE PARTIES RESIDING IN MASSACHUSETTS RESIDE IN THE CENTRAL AND/OR WESTERN SECTIONS OF THE DISTRICT? YES        (a) IF YES, IN WHICH SECTION DOES THE PLAINTIFF RESIDE?

9. IN WHICH SECTION DO THE ONLY PARTIES RESIDING IN MASSACHUSETTS RESIDE?

10. IF ANY OF THE PARTIES ARE THE UNITED STATES, COMMONWEALTH OF MASSACHUSETTS, OR ANY GOVERNMENTAL AGENCY OF THE U.S.A. OR THE COMMONWEALTH, DO ALL OTHER PARTIES RESIDE IN THE CENTRAL SECTION        OR WESTERN SECTION

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Christine Kelley Tramontana

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TELEPHONE NO. 617-770-2900

02171